14

Wm. Trullinger, Plff. in Error, and Defendant below vs. The borough of Harrisburg, def't in Error, and Plff. below.	Error to the Common Pleas of Dauphin county.

History of the Case, by the Defendant in Error, and Plaintiff below.

These suits were brought by the borough of Harrisburg against William Trullinger, to recover the penalty imposed by a certain ordinance passed August 7, 1847, prohibiting the sale of meat in the lower market house, in said borough, by less quantity than the quarter of a carcass; which ordinance was somewhat modified by another passed October 7, 1848, allowing *farmers, and they only* who have *rented stalls* in the lower market house to sell meat, pork or veal, "OF THEIR OWN RAISING," "in any quantity less than the whole carcass."

It appeared by the evidence that William Trullinger was living on a farm *near* the borough of Harrisburg, which he had rented from Thomas Elder, Esq., and moved on to it in the spring of 1849—that Trullinger was in the habit of buying cattle from drovers, and other farmers in the spring and summer, during the years 1849,–'50, and '51—that he fed and fattened them on this farm, with the produce of the farm, and what he bought from his landlord and others—that he slaughtered these cattle from time to time during the fall and winter of each year; brought the meat thereof to market and sold it out from a stall in the lower market house, during *market hours*, by the pound, in the manner practiced by the regular butchers, and at the times charged in the declarations. In 1849 he killed and brought to market the meat of cattle which he had bought out of a drove the week previous, and which made what was called by the witness "*slippery beef;*" and nothing better could be expected of any man who would so deliberately and impudently set at defiance and violate the ordinances of the borough. That the defendant had not rented a stall from the clerk of the market, (as the ordinances require,) but had used the one, or part of the one, rented by John Mahon, who attended the market with vegetables, poultry, butter, eggs, &c., but never presumed that he had a right to convert his stall into a *butcher's stall.* That the defendant had at one time followed butchering here about a year, "*in town*"—that the defendant had been repeatedly informed that he was violating the ordinances, but insisted on continuing his business, and did so on the ground that the ordinance was unconstitutional.

Argument for defendant in Error.

The amount claimed in these suits is small, but the question presented for the consideration and decision of this court is very important, inasmuch as it involves the right of the municipal authorities of the borough of Harrisburg under their charter to enact such rules, regulations and ordinances, as they may deem necessary to promote the

Digitized by the Internet Archive
in 2017 with funding from
This project is made possible by a grant from the Institute of Museum and Library Services as administered by the Pennsylvania Department of Education through the Office of Commonwealth Libraries

https://archive.org/details/wmtrullingerplff00unse_0

"peace, good order, benefit and advantage of the said borough," and "*particularly of providing for the regulation of the markets.*" The amended charter of the borough was passed on the 1st day of February, A. D., 1808. By the 3d section two regular markets are established on Wednesday and Saturday of each week; and by the 6th section of that charter, to be found in the laws of Pennsylvania, by Bioren, vol. 8, page 383, the town council of said borough, or a majority of them, are expressly authorized "to revise, repeal or amend all such by-laws and ordinances as have been heretofore made in said borough, and enact such other by-laws and make such rules, regulations and ordinances as shall be determined by a majority of them, necessary to promote the peace, good order, benefit and advantage of said borough—*particularly of providing for the regulation of the markets,*" &c., &c. And by the 4th section of the same act of Assembly, the said town council are fully authorized and empowered to impose fines and forfeitures for any violation of any of the by-laws and ordinances which they may pass; which fines and forfeitures shall be recovered before the Chief Burgess, in the same manner as debts not exceeding one hundred dollars are recoverable before a justice of the peace.

Under these various provisions of the charter it is confidently submitted to your Honors that the town council had full authority to pass the ordinance in question, as well as many others on different subjects which constitute the code of our borough laws. Nay, more, it is believed, that the town council might have gone much further, and prohibited the sale of meat altogether in the lower market house, if they, under the charter, had deemed it necessary to do so, in order to promote the peace, good order, benefit and advantage of said borough. *The market houses, be it remembered,* belong to the corporation, and the officers of that corporation have the same right to control and regulate the use of them, (by dividing them into different parts, and requiring that they shall be rented and used for specific purposes,) that an individual would have with his own private property. Under this view of the law the town council did pass a general ordinance, dated 19th March, 1842—vide page 33 of the borough laws; providing for the regulation of the markets and for the renting of stalls in the market houses of the borough of Harrisburg. By this ordinance, sect. 16, it is made the duty of the clerk of the market to enforce all laws, ordinances and regulations relative to the markets, and to seize and prosecute for all breaches thereof, and to prevent all persons from occupying stalls or stations without authority, or FOR PURPOSES not authorized, &c. By the 2d section it is made the duty of the clerk of the market to rent the different stalls, in the mode pointed out; and it is expressly provided that "the inside ranges of stalls in the upper market house shall be rented TO BUTCHERS for the purpose of vending meats, and the outside ranges of stalls of the upper market house, and *all the stalls* in the lower market house to be rented to persons for the vending of country produce and other commodities." The 8th section of this ordinance was intended to prevent the sale of meat by less quantity than the quarter of a carcass along the pavement, which practice had arisen, and to confine the retailing of meat of any kind to the stalls in one of the market houses; but advantage being taken of this indulgence by the farmers themselves, the town council found it necessary, (in order to prevent that confusion and jostling which would certainly occur from throwing all kinds of marketing promiscuously together,) to pass the ordinance in question, of August 7, 1847, which was subsequently amended by the resolution of August 7, 1848, before referred to. The council never did intend to permit butchering to be carried on in the lower market house; and in prohibiting it as they have done, we conceive that the council have not at all infringed upon that common law, freedom of Markets, as the opposite party would seem to suppose, because, although the markets in a general sense belong to the State, and its citizens, yet the market houses, as before intimated, belong to the particular corporation; having been built by them, with their funds, and therefore ought to be entirely under their control and regulation. Were it not so, none of those wholesome rules and regulations relative to the QUALITY and character of the provisions brought to market for sale, could be adopted and carried out by the municipal authorities

This ordinance, though a penal one, and similar in its character to a penal act of Assembly, must receive a reasonable and fair construction, and when the words are plain it must be decided on them, but if doubtful, recourse may be had to the subject matter; and the legislature by authorizing a civil remedy no doubt intended to avoid all unreasonable technicalities in the enforcement of such ordinances—10 Watts, 382, Garman vs. Gamble, 1 Harris, 338; Fisher vs. Patterson, 1 T. R. 96; Rex vs. Hodnett, 6 Watts and Sergt. 276; Mayor vs. Davis.

Again it is contended on the other side that this meat was of the defendant's own raising, and therefore he is not liable to the penalty. The court told the jury that if the defendant was a farmer, and the meat in question was of his own raising, he was not subject to the penalty; he had a right to sell it out in such quantities as suited his own fancy, or the convenience of his customers; and the court left it to the jury to determine which branch of business the defendant followed, &c. This matter was fairly and clearly decided by the jury in the court below, under the direction of the court. They have decided that it was not in any proper sense "*of his own raising;*" and that he followed the business of a butcher in the fall and winter, rather than that of a farmer.

These cattle, (for he killed a great many,) as appears by the testimony, were bought by the defendant in the spring and summer, slaughtered by him on the farm during the fall and winter, and brought in the form of beef to market and sold; and to hold that these cattle, or the beef made therefrom were of his *own raising*, and the production of this farm in any proper or legal sense, would in the "courtly" language of the opposite party, be the "very perfection and superlative of absurdity."

In 6th Watts and Sergeant, the Mayor vs. Davis, page 269, the bullock was purchased by the farmer, in a poor and lean condition, and then totally unfit to be slaughtered for the market—the defendant in that case did keep, feed, and fatten said bullock on his farm, for *the period* of thirteen months—then slaughtered him, and took the meat thereof to the Philadelphia market, and sold it, or a part of it, from his *own* stall, which he had rented from the plaintiffs at an annual rent of $20. He was sued for a violation of the market ordinance in relation to that market, and after a very full argument, it was decided that the city authorities had a right to pass the ordinance in question, prohibiting the sale of beef in that market, and that the beef thus sold in said market was not in any proper sense the produce of his farm. Then, if after thirteen months, feeding and fattening of the bullock in that case, it was properly decided (as I have no doubt it was) that the beef manufactured out of him, was not in any proper or legal sense the produce of the farm, what ground has the defendant, in the case now before the court, for his position, that these cattle, or the beef made therefrom, were of his own *raising?* Certainly, if the beef manufactured out of cattle, bought to be fed a short time and then slaughtered, can not, in a legal sense, be considered the produce of the farm, much less can the cattle themselves be considered as having been the farmer's own raising. *Raised*, signifies that which is propagated or invented; and propagate signifies, to continue or multiply the *kind*, by *generation or successive* production.—Webster's Dictionary.

As to the validity and obligatory force of ordinances thus passed by municipal bodies, I will refer the court to 6 S. & R., 322; Commonwealth vs. Bacon, 4 Barr, 49; Barker vs. City of Pittsburg, 4 Watts and Sergeant, 514; Mayor vs. Randolph, 9 Watts, 382; Green vs. Borough of Reading. This last case, in principle, decides the one now before the court. That related to the power of the corporate authorities of Reading, over the streets in said town; this one relates to the markets, and by reference to the opinion of the court, delivered by Judge Huston, it will appear that the 6th section of their charter, so far as relates to the

markets and streets, lanes and alleys, is almost word for word, the same as the 6th section of our charter, to which I have before referred, and upon the construction of which this question mainly depends. Then, if certain language of the Legislature will, in the opinion of this court, as stated in that case, confer absolute control and authority upon the corporation, over the streets of the town, it is confidently submitted that the same language will confer equal authority over the markets.

The first error assigned by defendant (and the only bill of exception to evidence,) relates to the evidence of M. Newman, the former clerk of the market. This evidence was properly received by the court, as we think, because it was very important for us to show that the petty rent of a farmer's stall was never intended to be a compensation for a privilege which would put a mere grazier on a par with a regular butcher, who had to pay much more for his stall; and further, to show that a distinction was always made between the butcher's stalls and those in the lower market house, which are nearly all rented to the country people. If the council did make such a distinction in the rent of the stalls, and the purposes for which they were to be used, it was certainly proper to prove it, and if they did, they had the absolute right to do so, and no one had any right to complain.

The other errors assigned are exceptions to particular parts of the charge of the court; and it is confidently submitted by *the defendant in error*, that the court below was entirely correct in the view they took of the case and the manner they put it to the jury. Indeed, if they erred at all it was against the plaintiff below, by stating the case to the jury on much more favorable terms for the defendant than he had a right to or was entitled to expect.

JOHN H. BRIGGS,
Attorney for Defendant in Error.